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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/825,609	04/03/2001	Earle Harry Sherrod	659/695	3279

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EXAMINER

REICHLE, KARIN M

ART UNIT	PAPER NUMBER
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3761

DATE MAILED: 06/30/2003

10

Please find below and/or attached an Office communication concerning this application or proceeding.

N.K.

Office Action Summary

Application No.

09/825,609

Applicant(s)

SHERROD ET AL.

Examiner

Karin M. Reichle

Art Unit

3761

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 25 March 2003.
- 2a) ☒ This action is FINAL. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-3, 6-14 and 18-20 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-3, 6-14 and 18-20 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☒ The proposed drawing correction filed on 25 March 2003 is: a) ☒ approved b) ☐ disapproved by the Examiner.
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____ 6) ☐ Other:

Art Unit: 3761

DETAILED ACTION

Specification

Drawings

✓

1. The proposed drawing correction and/or the proposed substitute sheets of drawings, filed on 3-25-03 have been approved. A proper drawing correction or corrected drawings are required in reply to the Office action to avoid abandonment of the application. The correction to the drawings will not be held in abeyance.

Description

✓

2. It is noted that the amendment to page 14, line 14 does not comply with 37 CFR 1.121, see e.g. line 11 thereof. A compliant amendment must be submitted in the next response, if any.

3. The disclosure is objected to because of the following informalities: 1) The Summary of the Invention section, i.e. a description of the invention of the claims, and the invention of the claims is no longer commensurate, see MPEP 608.01(d) and 1302.01. For example, where is a continuous water insoluble fluid impermeable delay layer set forth in this section? 2) In the amendment to page 6, line 3 of the specification "W5, W5" should be amended to read --W1',

Art Unit: 3761

W2'-- to be accurate, i.e. insert 20 does not include such widths. Appropriate correction is required.

Claim Rejections - 35 USC § 102

4. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

5. Claims 1-3, 6, 8-10, 12-14 and 18 are rejected under 35 U.S.C. 102(b) as being anticipated by Osborn, III et al, '862.

See Figures, col. 4, lines 55 et seq, col. 8, line 14-col. 16, line 9, especially col. 10, lines 35-37 and col. 8, lines 43-50, and col. 16, line 35-col. 17, line 33, i.e. the insert is 20, the garment facing outer surface or layer is 40, the body-facing outer surface or layer is 38, the at least one absorbent layer is 42.

The claims 1 and 12 further call for at least one continuous water insoluble fluid impermeable delay layer adapted to substantially affect the flow of fluid passing through the insert. Note also dependent claims 2-3, 13-14 and 18. Attention is invited to the definition of "substantially affect the flow" on page 10, lines 16-20 of the instant specification and some examples of such on page 10, lines 20-24, and thus the definition of "substantial change to flow direction" on page 10, lines 24-28 and the examples of such on page 10, line 28-page 11, line 1. With regard to the claim language "fluid impermeable", attention is invited to page 11, lines 15-19

Art Unit: 3761

of the instant specification, and thereby the definition of “partially inhibiting fluid”, page 11, lines 3-6, and the examples on page 11, lines 19-20. With respect to the definition of “continuous”, the American Heritage Dictionary defines such as “Extending or prolonged without interruption or cessation, unceasing.” and see Applicants’ arguments in the paragraph bridging pages 7-8 of the 10-15-02 response. In light of the specification, the dictionary definitions, the dependent claims and Applicants’ arguments, the fluid directing strip 48 is considered a “continuous water insoluble fluid impermeable delay layer”, see cited portions supra. The surface area of the primary surfaces, see definition on page 10, lines 3-6 of the specification, of the delay layer, e.g., member 48 are less than the surface area of the primary surfaces of the absorbent layer, e.g. the core 42, see, e.g., Figures. With regard to the functional language of lines 7-8 of claim 1 and lines 10-11 of claim 12, see again the discussion supra of the definitions and cited portions of Osborn et al. With regard to the preambles of claims 1 and 12, since the structure of Osborn is the same as that claimed, there is sufficient factual basis to conclude that any claimed functions, properties, or capabilities of such claimed structure are also inherent in the same structure of Osborn et al. See MPEP 2112.01.

In regard to claims 2-3, and 13-14, see discussion with respect to the continuous fluid impermeable layer supra. With regard to claim 10, the second absorbent layer is 46. In regard to claims 8 and 9, see portions of Osborn cited supra. Also with regard to the “adapted for” language in claims 8 and 9, the structure of the claimed attached portion and the attachment portion of Osborn et al is the same and thus there is sufficient factual basis to conclude that the

Art Unit: 3761

claimed properties, functions and capabilities of such claimed structure is also inherent in the same structure of Osborn et al, i.e. capability of attaching to anything including an absorbent garment.

See MPEP 2112.01. With regard to claim 18, the intake layer is 46:

6. Claims 1-3, 6-7, 12-14 and 18 are rejected under 35 U.S.C. 102(b) as being anticipated by Matsuda.

See Figures, col. 1, line 26-col. 2, line 26, i.e. body-facing outer surface or layer, top portion of 11, garment-facing outer surface, bottom portion of 11, absorbent layer, at least one of 8-8b, continuous fluid impermeable delay layer, see definitions in previous rejection and at least one of 9-9b. With regard to the preambles, see discussion of such in previous rejection which discussion also applies here with respect to Matsuda.

7. Claims 1-3, 6-14 and 18 are rejected under 35 U.S.C. 102(b) as being anticipated by Clark et al, '137.

See Figures 1-4b, col. 4, lines 47-65, i.e. while shown as being stacked with the largest napkin at the top and the smallest at the bottom they could also be stacked with the largest at the bottom and the smallest at the top, col. 5, lines 41-col. 6, line 6, i.e. body-facing outer surface or layer, topmost layer 22, garment-facing outer surface, bottommost layer 26, absorbent layer, at least one of 24, continuous fluid impermeable delay layer, see definitions in previous rejection and at least one of uppermost layer(s) 26. With regard to the preambles, see discussion of such in previous rejection which discussion also applies here with respect to Clark. In regard to claim 11, the second absorbent layer is either the uppermost 26 when the top layer is the largest layer or the

Art Unit: 3761

center 26 when the top layer is the smallest layer. In regard to claim 18, the intake layer is the uppermost 24.

Claim Rejections - 35 USC § 103

8. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

9. Claims 19-20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Osborn III et al in view of Kimberly-Clark Corp. '451, hereinafter referred to as KC.

Applicants claim a system including the combination of an absorbent garment and an absorbent insert. See discussion of the Osborn reference supra. The Osborn reference teaches the insert attached to or in combination with an undergarment or clothing in the form of a panty but does not state whether the undergarment or clothing is absorbent. Note the definition on page 4, lines 16-25 of the instant specification. Also see KC at page 1, lines 10-17. To make the undergarment or panty of Osborn of cotton, i.e. absorbent of vaginal discharges and perspiration, i.e. body exudates, if not already, as taught by KC would be obvious to one of ordinary skill in the art in view of the recognition that such textile composition is well known for regular undergarments or panties and the desire of Osborn to be used with regular undergarments or panties.

Art Unit: 3761

Response to Arguments

10. Applicants remarks on pages 9-11 with regard to the informalities but are either deemed moot because the specific issues discussed have not been reraised or are deemed nonpersuasive because the response did not amendment the specification to overcome the issues remaining, see discussion supra. Applicants remarks with regard to Nilsson et al have been considered but are deemed moot in that such rejections have not been reraised. Applicant's remarks with regard to Matsuda have been considered but are deemed nonpersuasive in that such remarks are not consistent with the art rejection, i.e the delay layer is considered elements 9-9b not element 10. It is noted that the 103 rejection on Osborn and KC could be similarly applied to the combination of Clark et al and KC.

Conclusion

11. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after

Art Unit: 3761

the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any new grounds of rejection were necessitated by Applicant's amendments to the independent claims 1, 12 and 19, i.e the addition of the "water insoluble" requirement.

12. Any inquiry concerning this communication should be directed to K. M. Reichle at telephone number 703-308-2617. The Examiner's regular work schedule is Monday-Thursday. The Official RightFAX number is 703-872-9302.

KMR

June 21, 2003

Km Reichle
KAROL REICHEL
PATENT EXAMINER